

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matters of:

STUDENT,

Petitioner,

v.

MODESTO CITY SCHOOLS,

Respondent.

OAH CASE NO. N 2007030782

**ORDER DENYING MOTION TO SET  
ASIDE ORDER OF DISMISSAL**

On March 22, 2007, the Office of Administrative Hearings (OAH) received from Father<sup>1</sup> a Request for Due Process Hearing (Complaint) on behalf of Student, naming Modesto City Schools (District) as Respondent. On May 8, 2007, the parties entered into a Mediation Agreement to resolve Student's Complaint. OAH issued an Order of Dismissal on May 14, 2007, due to the Mediation Agreement. On May 14, 2007, OAH received from Father, on behalf of Student, a Motion in Opposition to the Dismissal Order. Father filed the motion as the attorney for Student.

**APPLICABLE LAW**

The purpose of the Individuals with Disabilities Education Improvement Act (IDEIA) (20 U.S.C. §§ 1400, et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (§ 1400(d)(1)(A), (B), and (C); see also, Ed. Code, § 56000.) Nothing in the IDEIA is to be construed "to restrict or limit the rights, procedures, and remedies available . . ." (§ 1415(l).)

California Family Code section 3003, provides that parents who have joint custody of a child "share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child."

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<sup>1</sup> Father is also an attorney admitted to practice in California.

IDEIA encourages settlement agreements as a matter of public policy because they promote the amicable resolution of disputes. To allow parties to void a settlement agreement when the agreement becomes unpalatable is contrary to the important federal policy of encouraging settlement agreements. Public policy favors upholding a settlement agreement entered between parties. The fact that parties reach a settlement agreement during mediation, rather than during litigation, does not lessen the binding nature of the agreement on the parties. When parties enter into a settlement agreement, they enter a contract, which will be enforced as the agreement is a binding contract voluntarily agreed to by both parties. (*D.R. by M.R. v. East Brunswick Bd. of Educ.* (3d Cir. 1997) 109 F.3d 896, 901.)

California Education Code section 56505, subdivision (h), provides that a decision issued in a case, which would include a settlement agreement reached by the parties, is the final determination and binding on the parties. Pursuant to *Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026, OAH does not have jurisdiction to enforce provisions of a final decision, which would include a settlement agreement. (See, Ed. Code, § 56501, subd. (a).) A party's remedy to enforce the terms of a settlement agreement is either to file a compliance complaint with the Superintendent of Public Instruction or institute a court action. (See, *Porter v. Manhattan Beach Unified School District* (9th Cir. 2000) 307 F.3d 1064.)

## DISCUSSION

According to Father's motion, Mother signed the Mediation Agreement against the advice of Father. The motion states that Father did not consent to the Mediation Agreement, and that the Parents are married. The motion requests that OAH set aside the Dismissal Order based on the Mediation Agreement because the Dismissal Order violates Father's legal rights to make decisions regarding Student's education.

The two cases cited in the motion do not support Father's request to set aside the Dismissal Order. *Westside Union School District* (2001) SEHO No. 2001-157 held that one divorced parent could proceed to hearing over the objection of the other parent because both parties had joint legal custody of the student, which includes the legal right to make decisions regarding the student's education. In *Capistrano Unified School District* (1999) SEHO No. 802-99, the Administrative Law Judge denied the father's motion to dismiss the due process complaint that the mother filed, and ordered the divorced parents, who both had joint legal custody of student, to go to family court to resolve their dispute. Neither case involved whether one parent with joint legal custody could enter into a settlement agreement over the objections of the other parent. However, both cases stated that either parent with joint legal custody has the right to file a due process complaint and proceed to hearing. The right of either parent to file a due process complaint implies that the other parent has the equal right to enter into a settlement agreement in exercise of that parent's legal rights regarding the child's education.

Because Mother in Student's case had the legal right to enter into a Mediation Agreement, which withdrew the request for a hearing, the Mediation Agreement constitutes a resolution of the case. OAH does not have the jurisdiction to enforce a settlement agreement, which also means that OAH does not have the jurisdiction to set aside a settlement agreement signed by a parent with joint legal custody. Therefore, Father needs to institute a court action to set aside the Mediation Agreement.

### **ORDER**

Father's Motion in Opposition to the Dismissal Order is DENIED.

DATED: May 17, 2007

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PETER PAUL CASTILLO  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings